3: Mackenzie M-5 (ca. 1925) 1925
FN17 Ngonde FN17

CHAPTER VI

Law & Crime

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LAW, morals, and religion are inseparably bound up together. The old idea, still hard to kill, that in the native mind morals and religion [illegible] is the reverse of the truth; but African ideas of morality do not always coincide with European, and to this disparity may be traced the belief that there is no morality in African religion. The sinless man is the man who has broken no law. He is said to be [illegible], without offence. Now as law and custom are one, and as the spirits are jealous for the retention of all customs that were in force while they were on earth, the man who is assured of a good reception in the underworld is he who has either broken no law of custom, or, having broken the law, has made the required atonement to the injured person.

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Everything was settled in the long distant past by the fathers, and all one has to do is to conform. For the long domination of ancient custom in law, morals, and religion, meant that life had attained to a condition of stable equilibrium, before the coming of the white man set all in confusion again for many of the people. The ancient equilibrium was disturbed by

3: Mackenzie M-5 (ca. 1925) 1925
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671 law-breaking, and the balance was restored when the law was vindicated. The idea that stable equilibrium means stagnation is alien to the Konde mind. To disturb the balance in order to advance to new conditions is a European, not a Bantu idea, and wherever the European stimulus has been removed, the wheels of custom drag heavily again.

692 695 A native court is not, to a white man, an imposing spectacle; though no doubt it is fearsome enough to some trembling rascal, who has little reason to hope that his misdeeds will escape their due reward. The court meets under the village tree, or, if the weather is bad, on the verandah of the chief or judge. There the chief sits with his headmen if the case is an important one, and there are usually a few old men present also, in whose memories are stored up records of previous cases which may have some bearing on the one in hand. The persons concerned are among the audience, which sits facing the court; and when called upon, they rise in turn, and conduct the case from where they stand. The native is a keen disputer. I have known a clever man fight his case with amazing skill and perseverance; even after it was clear that the evidence against him was complete, he would go on adducing fact after fact with a dialectical skill that would not disgrace a European lawyer at cross-examination. If the judge is a man with a [33] sense of humour, he often announces his decision by relating some well-known story, the point of which is taken by all, as, with expressions of approval or otherwise, they rise and go. Execution of sentence

10:Gulliver E-5 (1954-1955) 1958 FN17 Ngonde FN17
Nyakyusa

in fact they usually settle on the common East African pattern of scattered homesteads, each in its arable area, and not in the tight Nyakyusa village pattern.

I think that the headmen and chiefs concerned would not welcome a restraint on immigration, for it offers them a chance to emulate the numerically produced prestige of their fellows in the flood plains, to whom at the moment they feel inferior. They would, of course, most probably prefer indigenous Nyakyusa, could the latter be persuaded to settle there. As it is, at least some of the Nyakyusa of these northerly villages are trying to move into the flood plains, where they can more easily cultivate paddy and where they can join in a more active and ebullient village life.

One type of foreigner to the Lake Plains is the man (almost invariably a Nyakyusa from the Highlands) who has obtained land but does not settle on it nor in any village. He continues to live in his upland village and comes down to the plains only to cultivate and harvest his paddy field. This is strictly against Nyakyusa land law and custom and, in fact, such an absentee land-holder has often made a substantial monetary gift to the chief or headman for the protection of this extra-legal privilege. These strangers are frequently among the more wealthy upland Nyakyusa, who can afford such payments as these, and often they are of chiefly rank themselves, perhaps having kinship ties with the local chief. There are probably no *chiefdoms where such strangers have just obtained paddy fields, through* naturally those which contained a good deal of vacant, usable paddy land at the beginning of the cash-cropping era have most.

This does arouse a certain amount of ill-feeling and opposition amongst local villagers who have insufficient land themselves, for they lose land and gain no numerical strength or profit of any kind. The illegal action of the local chief is also condemned, especially as the chiefs should not in any case assume allocatory powers. On the other hand it must be noted that the commoners philosophically accept the supposedly protected prerogatives of their chiefs under European rule and they expect the chiefs to take advantage of them. As with the case of the minority of large land-holders, the actual effect is not particularly great and reformation here would be a minor palliative. Nevertheless in this manner there is a definite and unpopular infringement of villagers' rights and of the local customary law.

One other group of strangers may be noted for the sake of completeness. That is the Kisi, who have for at least two generations been settling along the lake shore itself from Matema in the east to the Songwe river (and beyond) in the south-west. They have come from the north-eastern shores of the lake and in the Nyakyusa area they are principally fishermen who do not, therefore, compete with the indigenous population economically. They cultivate only tiny plots of cassava and sometimes of finger millet, although a few of the younger generation are now trying to grow a little paddy also. The total number of Kisi involved cannot be more than a few hundred and they have probably not increased much over the past decades. They follow an almost separate existence from their Nyakyusa neighbours, not intermarrying, and following their own way of life.[1]

1. The many Kisi settlements in Kyoma District are in the Ngonde area, on lowland peninsulas south of the Lake Malawi, which they inhabit almost [illegible] and are employed as skilled fishermen and in fish marketing. Kisi women speak Kisi and Nyakyusa. They are widely known as potters, and they exchange their wares for cereal foods at [illegible] village markets.